

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 94 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

SHAH ANISHKUMAR BABUBHAI

Appearance:

MR MANISH R BHATT for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 03/02/98

ORAL JUDGEMENT

Per: R.K. Abichandani, J.

1. The Income-tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the proviso inserted w.e.f. 1.4.88 in

section 43B of the Act by the Finance Act, 1987 was retrospective in operation and applied to as assessment year 1984-85 to 1987-88 also and in directing the ITO to allow the deduction on verifying the fact that unpaid sales tax liability had been discharged by actual payment before due date for filing the return under section 139 (1)?"

2. Identical question in similar factual background came up for consideration before us in Income-tax Reference No. 295/94 which is decided by us today. Since the facts are similar and point involved is identical, we do not reproduce the facts in this order from the record of this Reference. In answering the identical question in the said matter we have followed the ratio of the decision of the Supreme Court in Allied Motors (P) Ltd. v. C.I.T. reported in 224 ITR P. 677 and the decision of this Court in the case of C.I.T. v. M/s. Chandulal Venichand & others, reported in 209 ITR P. 7. For the reasons which are given by us in deciding the question involved in Income-tax Reference No. 295/94, we are of the view that the Tribunal was right in holding that the proviso inserted w.e.f. 1.4.88 in section 43B of the Act by the Finance Act, 1987 was retrospective in operation and applied to as assessment year 1984-85 to 1987-88 also and in directing the ITO to allow the deduction on verifying the fact that unpaid sales tax liability had been discharged by actual payment before due date for filing the return under section 139 (1). The question referred to us is, therefore, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed off accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[KUNDAN SINGH, J.]

Amp/-